management of their internal affairs by the States. Nevertheless, the highest Federal court has just passed upon the qualifications of an aspirant for the office of governor of Nebraska.

The case arose upon a provision in the State constitution to the effect that the governor should be a citizen of the United States. The respondent claimed to be a naturalized citizen of the United States, and to have been duly elected governor. The Supreme Court of the State decided against him,[1] on the ground that he had never become a citizen. Upon writ of error the Supreme Court of the United States decided for the respondent, reversing the decision of the State court. Its jurisdiction is founded upon the fact that here was a decision of a State court adverse to a right claimed under the laws of the United States.

It may be doubted whether the court has not assumed a jurisdiction which Congress did not give it, and, indeed, could not give it. The right to be governor of a State is not a privilege of a citizen of the United States as such, and is essentially outside the sphere of Federal concern. Nor is it made a Federal question by a State law requiring that the governor shall be a citizen of the United States. The phrase "citizen of the United States," as used in the State constitution, is merely a mode of expression. The State might have imposed the same qualifications in other terms, and confessedly there would have been no question for the Federal courts. Surely Federal jurisdiction depends upon substance rather than form, and cannot be made to hang upon the phrase which the legislature uses. Suppose a State imposes a penalty for selling liquor without a license from the United States, and the State court has found that the defendant had no such license. Is he entitled to have his case reviewed by the Federal courts? When a State adopts a Federal law, or when it legislates in terms of Federal rights or privileges or status, it there makes the law its own. The law is none the less a State law because it is expressed in terms of Federal law. It is submitted that the decision of the court would have been sounder if it had been to the effect that where a question arises under a United States law which comes into the case only because brought in by a State law founded upon it, there the question does not involve the laws of the United States. Mr. Justice Field dissents, upon the ground set forth above, and points out that *Missouri* v. *Andriano*, 138 U. S. 496, the only authority which the majority cite, contained only a *dictum* on this subject.

EXTENT OF LEGISLATIVE POWER UNDER THE DOCTRINE OF THE GRANGER CASES. — The Supreme Court of the United States has again affirmed the doctrine of the Granger cases. The actual decision[2] is that a law of New York prescribing a maximum rate of charges for grain elevators in the city of Buffalo is valid. The case is, indeed, almost an exact repetition of *Munn* v. *Illinois*,[3] and, as in that case, there is a strong dissent denying the general right of the Legislature to regulate a purely private business, though "clothed with a public interest."

There is only one respect in which the case really adds anything to what has gone before, and that is the interpretation which Mr. Justice Blatchford, writing the opinion of the court, puts upon the decision of

[1] 48 N. W. Rep. 739. [2] *Budd* v. *State of New York*, 12 Sup. Ct. Rep. 648.
[3] 94 U. S. 113.

the case of *Chicago etc. R. R. Co.* v. *Minnesota*, 134 U. S. 418. He says, speaking of that case: "That was a very different case from the one under the Statute of New York in question here; for in this instance the rate of charges is fixed directly by the Legislature. . . . What was said in the opinion in 134 U. S. as to the question of the reasonableness of the rate of charge being one for judicial investigation, had no reference to a case where the rates are prescribed directly by the Legislature." It is evident from this language that the learned Justice considers that the case of *Chicago, etc. R. R. Co.* v. *Minnesota* decided merely that the Legislature could not authorize a commission to settle finally maximum rates for railroad charges which should not be examinable in the courts on the point of reasonableness, and that it did not decide that the Legislature itself had not the power so to establish rates. With all due deference, it is difficult to see how this explanation is arrived at. There was certainly in that case an attempt by the Legislature — at least that was the interpretation put upon the Statute by the State court, and adopted by the Supreme Court — to clothe the commission with absolute power finally and conclusively to establish railroad rates. If the Legislature itself possessed such power, and *could* delegate it to a commission, it seems difficult to say that it did not do so. And as there was no intimation in the decision of the case that anything turned on the power to delegate, — which seemed to have been admitted, —the conclusion seems irresistible that the court must have held that the Legislature did not itself have this final power over rates which it could delegate. And this, without question, was what the minority of the court thought the decision to be. This point, however, the court in the present case intimates to be still open; for the opinion says: "In the cases before us the records do not show that the charges fixed by the Statute are unreasonable, or that property has been taken without due process of law, or that there has been any denial of the equal protection of the laws, *even if under any circumstances we could determine that the maximum rate fixed by the Legislature was unreasonable.*"

Judge Blatchford also adverts to the fact that in the Minnesota case the Act of the Legislature was passed under a constitution "which provided that all corporations, being common carriers, shall be bound to carry on 'equal and reasonable terms.'" It would seem that this circumstance was immaterial. In the absence of such constitutional provision, it is conceded that the Legislature has power to regulate railroad charges, under its general police power. Now, all regulations made in the exercise of this legislative power are subject to the restriction that they be reasonable and proper for the purpose in view. Courts have frequently pronounced such laws invalid upon the sole ground that they were unreasonable.[1] And there would seem to be no reason why a law establishing railroad rates should not be subject to the same test as any other police regulation. Indeed, there can hardly be any branch of legislation which requires such close scrutiny from the courts on the score of reasonableness. Of course it is not meant by this that the court is to determine upon the validity of such a law according to its own notion of what is reasonable. It was determined by the Granger cases that it is primarily for the Legislature to say what rates shall be reasonable, and the court has no right nor power to substitute its own opinion for

[1] See *Toledo Co.* v. *Jacksonville*, 66 Ill. 37; *Ohio Co.* v. *Lackey*, 78 Ill. 55.

that of the Legislature. But the court has the right and duty here, as in all other cases of police regulations, to examine the determination of the Legislature, and to declare it invalid if it goes beyond the limits of rationality. When it was held that the Legislature had the power to establish reasonable rates for railroad charges, it did not follow that it had power to fix any rate it pleased, reasonable or beyond the bounds of reason. And the question whether or not the Legislature had exceeded its power still remained for the court. It was supposed heretofore that the Minnesota case had established this very point. But the *dictum* in *Budd* v. *State of New York*, quoted above, at least throws doubt upon the subject.

RECENT CASES.

AGENCY — NEGLIGENCE OF VICE-PRINCIPAL. — A foreman in charge of laborers removing the roof of a railroad company's building is the vice-principal of the company, and not a fellow-servant of the laborers. *Sullivan* v. *Hannibal & St. J. Ry. Co.*, 17 S. W. Rep. 748 (Mo.).

BILLS AND NOTES — CO-MAKER AS SURETY — RATIFICATION OF MATERIAL ALTERATION. — Defendant, as surety for one T., signed a note as co-maker, payable to plaintiff. Afterwards, without the knowledge of defendant, one M. signed the note as an additional surety. Defendant heard subsequently of this alteration in the note, and assented to it, but received no new consideration for his assent. *Held*, in an action on the note, that this assent was a valid ratification, and bound him. *Owens* v. *Tague et al.*, 29 N. E. Rep. 784 (Ind.).

There is very little authority on this point. In favor of the principal case are 13 Iowa 567 and 21 Ill. 128 (*semble*); cf. also Brandt on Suretyship, § 384. But it is hard to see how the court reconcile this case with their previous language in *Henry* v. *Heeb*, 114 Ind. 275, where it was said that a forged signature on a note purporting to bind one H. as surety, could not be effectually ratified without a new consideration; cf. Daniels on Negot. Inst., §§ 1351, 1352 *a*. And on principle the case cannot be supported. The alteration in the note by adding a new party, being material, was a real and not a personal defence; it made the note void. In default of an implied agency, or of an estoppel, none of the original parties could revive his liability without a new valid contract.

BILLS AND NOTES — FAILURE OF CONSIDERATION NOTICE. — Defence of breach of warranty is of no avail against indorsee for value of a negotiable note, before due, who knew that the consideration for which the note was given was a jack, warranted to be a sure foal-getter, but having no knowledge until after transfer that the warranty failed. *Rublee* v. *Davis*, 51 N. W. Rep. 135 (Neb.).

BILLS AND NOTES — STATUTE OF LIMITATIONS. — S. made a note payable on demand to K., or order, dated Oct. 9, 1879. K. indorsed the note to the N. Bank as collateral security, and later it was indorsed to the plaintiff with K.'s consent as collateral for a debt due by K. to the plaintiff. S., the maker, not knowing of the transfer of the note by K., paid the note to K. by instalments, beginning in 1885 and ending in 1889. Plaintiff notified S. that he was the holder of the note, and S. pleaded the Statute of Limitations. The plaintiff relied on a payment in November, 1885, which K. had turned over to him, to defeat the plea. *Held*, an acknowledgment to a third party is not sufficient to take a debt out of the Statute. Here, as the defendant did not suppose that K. was the plaintiff's agent to receive this payment (as in fact he was not), the payment to K. was not an acknowledgment which would take the case out of the Statute. *The Stamford, S., and B. Banking Co., Ld.*, v. *Smith*, 92 L. T. 273 [Ct. of App. (Eng.)]

This decision seems to be inconsistent with the general English rule on the subject as laid down in Byles on Bills (14th ed.), p. 372. The learned author there refers to several cases in which an acknowledgment, or part payment of the debt by the obligor